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- General Notice

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U.S. Customs Service

General Notice

DUTIABILITY OF "ROYALTY" PAYMENTS

ANALYSIS OF COMMENTS

Thirteen comments were submitted in response to the notice concerning the "Dutiability of 'Royalty' Payments" published in the June 19, 1991 CUSTOMS BULLETIN.

BACKGROUND

On February 4, 1991, Customs issued Headquarters Ruling Letter (HRL) 544436 (C.S.D. 91–6; 25 Cus. Bull. 18, at p. 19) involving the dutiability of "royalty" payments made by an importer/buyer to a seller. Pursuant to a contract between the importer/buyer and the seller, the importer/buyer was obligated to pay the seller 7% of the resale "invoice price" of the imported merchandise. The "invoice price" was defined as the importer's/buyer's "[i]nvoice [p]rice minus Seven Percent (7%) to cover any and all deductions and allowances". The sales agreement between the importer/buyer and the seller, *i.e.,* the "purchase contract", was subject to the terms and conditions of the contract requiring the 7% payment. The importer/buyer had been paying duties on the payments as "royalties" under section 402(b)(1)(D) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1)(D); TAA).

In HRL 544426, Customs held that the payments were not dutiable under the royalty provision, section 402(b)(1)(D) of the TAA. Rather, Customs determined that the payments were proceeds of the subsequent resale of the merchandise that accrued to the seller. Therefore, the payments were dutiable under section 402(b)(1)(E) of the TAA.

In reaching this conclusion, Customs examined the statutory language and the legislative history of the TAA and determined that there was authority to examine both the "royalty" provision and the "proceeds" provision to determine the dutiability of the payments. This determination represented a departure from Customs prior analysis which focused only on the dutiability of these types of payments under the royalty provision.

Several interested parties requested an opportunity to comment on Customs position in HRL 544436. Therefore, Customs solicited comments through a notice published in the Customs Bulletin dated June 19, 1991 (25 Cust. Bull. 25, at 8). Thirteen comments were received, all of which took issue with some portion of HRL 544436. An analysis of the comments follows.

I. Statutory Language and Construction

Initially, the analysis of the issues raised in HRL 544436 must begin with the relevant language of the TAA. Section 402(b) of TAA provides that the transaction value of the merchandise is the "price actually paid or payable for the merchandise when sold for exportation to the United States plus amounts equal to [five specified items]." The first three statutory additions are packing costs, selling commissions and assists. (*See* section 402(b)(1)(A)–(C)). The remaining two statutory additions to the price actually paid or payable are as follows:

> (D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and
>
> (E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

One interested party took the position that the statutory language is not ambiguous, and therefore any mention or resort to the legislative history of these provisions is not permissible. The commenter argues that the two subsections considered *in pari materia* are complementary and do not conflict. That is, each subsection describes a distinct item. Further, the commenter stated that "[t]he statute does not provide the royalties and proceeds are 'cascade' provisions." That is, he believed that the second provision cannot be applied if the first does not result in dutiability, any more than it does so for packing costs, commissions, and assists.

A second commenter contended that a harmonious interpretation of the provisions would afford each subsection its own meaning. Therefore, this would require that payments determined to be *bona fide* royalties, whether dutiable or not dutiable, cannot be regarded as proceeds of a resale, merely because the royalties have been expressed as a percentage of a subsequent resale.

Statutory construction must start with the language of the statute. *Generra Sportswear Co. v. U.S.*, 905 F.2d 377 (Fed. Cir. 377, 378–379) citing *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). In reading the language of the statute it is clear that there are five items which are additions to the price actually paid or payable. The statutory language of the five additions plainly shows by the use of the word "and" connecting 402(b)(1)(D) and (E) that in any one transaction any or all of the statutory additions may be found and it is incumbent upon Customs to look for all five statutory additions. Therefore, the comment concerning the fact that the royalty and proceeds provisions are not "cascade" provisions if not consistent with the plain language of the statute that requires that all five statutory additions be examined in each transaction. Customs cannot accept an interpretation of the statute that leads to a situation in which some transactions *i.e.* transactions involving alleged royalties, will only be reviewed to deter-

mine whether any of only *four* additions are present under sections 402(b)(1)(A)–(D).

The next step in reviewing the statutory language is to examine the language of each addition. Two of the items to be added to the price actually paid or payable, "packing costs" and "assist[s]" are specifically defined in section 402(h) of the TAA. The remaining three items, selling commissions, royalties and license fees, and proceeds, are not defined.

In an effort to determine whether a payment is a dutiable "selling commission", Customs has had to look beyond the plain language of the statute, given the absence of a definition for the term. There is also no legislative history discussing the term selling commission, therefore, Customs has relied on the common law of agency to determine whether an agency relationship exists and whether the commissions paid to an agent are "selling commissions".

Similarly, the terms "royalty", "license fee", and "proceeds" are not defined in the TAA. Further, within the royalty and license fee provision, 402(b)(1)(D) the terms "related to the imported merchandise" and "condition of sale" are not defined within the statute. Thus, it is unclear from the language of the TAA what payments are to be covered under 402(b)(1)(D) and (E). As a result, the legislative history must be reviewed to determine the Congressional intent of these provisions.

II. Legislative History

The legislative history of the TAA includes the Statement of Administrative Action, which was adopted by Congress and reports of the House Ways and Means Committee and the Senate Finance Committee. Several commenters argued that the Customs position in HRL 544436 was based on one sentence of the legislative history taken out of context. This sentence was that "certain elements called "royalties" may fall within the scope of the language under *either* new section 402(b)(1)(D) or 402(b)(1)(E) *or both*" (emphasis added). H.R. Rep. No. 317, 96th Cong., 1st Sess. (1979) at 80. Therefore, the following is an exact quotation of the applicable portions of the Statement of Administrative Action as well as the committee reports.

A. *Statement of Administrative Action:*

The relevant portion of the Statement of Administrative Action states the following;

> Additions for royalties and license fees will be limited to those that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States. (Statute) In this regard, royalties and license fees for patents covering processes to manufacture the imported merchandise will generally be dutiable, whereas royalties and license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise, will generally be considered as selling expenses of the buyer and therefore will not be dutiable. However, the dutiable status of royalties and license fees paid by the buyer must be determined on [a] case-by-case basis and

> will ultimately depend on: (i) whether the buyer was required to pay them as a condition of sale of the imported merchandise for exportation to the United States; and (ii) to whom and under what circumstances they were paid. For example, if the buyer pays a third party for the right to use, in the United States, a trademark or copyright relating to the imported merchandise, and such payment was not a condition of the sale of the merchandise for exportation to the United States, such payment will not be added to the price actually paid or payable. However, if such payment was made by the buyer as a condition of the sale of the merchandise for exportation to the United States, an addition will be made. As a further example, an addition will be made for any royalty or license fee paid by the buyer to the seller, unless the buyer can establish that such payment is distinct from the price actually paid or payable for the imported merchandise, and was not a condition of the sale of the imported merchandise for exportation to the United States. (Regulation) Charges for the right to reproduce the imported goods in the United States shall not be added to the price actually paid or payable for the imported merchandise. The right to reproduce is understood to refer to that situation in which an idea or an original work is incorporated in, or reflected by, imported merchandise, and the right to reproduce that idea or work in other merchandise, by using the imported merchandise, is a reserved right. The right to reproduce is understood to cover only the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species. (Regulation)

The provision in the Statement of Administrative Action addressing the dutiability of proceeds of subsequent resale states that:

> Additions for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller, do no extend to the flow of dividends or other payments from the buyer to the seller that do not directly relate to the imported merchandise. Whether an addition will be made must be determined on a case-by-case basis depending on the facts of each individual transaction. (Regulation)

B. *House Report:*

The Report of the Committee on Ways and Means, House of Representatives (H.R. Rep. No. 317, 96th Cong., 1st Sess.) (1979) concerning the TAA, contains a discussion of the additions to the price actually paid or payable under section 402(b)(1) of the TAA. The committee emphasized in the report that the additions to the price actually paid or payable must be based on sufficient relevant information. *See,* H.R. 317, 96th Cong., 1st Sess. at 80.

The Ways and Means committee further stressed in its report that transactions involving royalties, license fees, patents, and copyrights are complex business arrangements tailored to cover a specific set of conditions. *Id.* at 80. Therefore, the Customs Service has to examine carefully each case before making a decision as to whether an addition

should be made to the price actually paid or payable. *Id.* The Committee stated the decision on additions for "the proceeds of any subsequent resale, disposal or use of the merchandise" also has to be made on a case-by-case basis.

Finally, the Ways and Means Committee pointed out that

> [t]he existing treatment under law of royalties for customs purposes is intended to continue under the operation and administration of section 402(b)(1). Therefore, certain elements called "royalties" may fall within the scope of the language under either new section 402(b)(1)(D) or 402(b)(1)(E) or both. Similarly, some elements called "royalties" may not be dutiable under either 402(b)(1)(D) or 402(b)(1)(E).

Id. at 80.

C. *Senate Report:*

The Senate Finance Committee also prepared a report on the TAA. Specifically, the Senate Finance Committee stated that "the provisions for additions for certain royalties and license fees and for the proceeds accruing to the seller of any subsequent resale, disposal or use of the imported merchandise generally would follow current practice." S. Rep. No. 249, 96th Cong., 1st Sess., at 120 (1979).

The Senate Finance Committee further explained that it also intended that

> [u]nder the bill, the provisions for additions for certain royalties and license fee and for the proceeds accruing to the seller of any subsequent resale, disposal or use of the imported merchandise generally would follow current practice. Customs Service officials will make a decision as to whether an addition will be made on a case-by-case basis. Since transaction involving royalties, license fees, patents, and copyrights are complex business arrangements tailored to cover a specific set of conditions, each case must be carefully examined before the Customs Service can reach a final decision. The existing treatment under law of royalties for customs purposes is intended to continue under the operation and administration of new section 402(b)(1) Therefore, certain elements call "royalties" may fall within the scope of the language under either new section 402(b)(1)(D) or 402(b)(1)(E), or both. Similarly, some elements called "royalties" may not be dutiable under either 402(b)(1)(D) or 402(b)(1)(E).

Id.

Prior to reviewing the precedent cases involving royalties under the prior law, the language in the report should be analyzed. The first sentence in the quoted section of the House Ways and Means report [also the fourth sentence in the Senate Report] simply refers generally to section 402(b)(1) and the fact that the existing treatment of royalties was intended to continue under 402(b)(1). Section 402(b)(1) covers both the definition of the transaction value as well as the five statutory additions. It is not until the next two sentences that specific parts within this gen-

eral section are mentioned. Those two subsections are 402(b)(1)(D) and 402(b)(1)(E), the royalty provision and the proceeds provision respectively. Nowhere does either committee expressly state that charges termed to be "royalties" can only be dutiable under section 402(b)(1)(D).

Some commenters pointed out that quotation marks were placed around the word royalties in the two sentences at issue [the last two sentences of the quoted material from both reports]. One commenter stated that the quotation marks "indicate the Report's belief that the word very often is imprecisely used and is not a reliable indication as to which category the price element belongs". Another commenter explained that "[t]he language implies that the concern of the Congress was over payments that may be called "royalties" but in fact represent part of the real price paid or payable for the merchandise, rather than for rights that are separate from the merchandise". Still other commenters said that these sentences were ambiguous or "not a model of clarity".

As was stated previously in the discussion of the statutory language, Customs interprets the statute as having five additions to the price actually paid or payable to arrive at transaction value, all of which must be examined in each transaction to determine if additions should be made. The language of the reports clarifies this concept for cases in which an importer is claiming that it paid a royalty. What the Committees explained in the reports is that in these situations Customs may look to see if the payment is dutiable under *either* section 402(b)(1)(D) or 402(b)(1)(E) or *both* or *neither*. By putting the term royalties in quotation marks, the committees left the decision to the Customs Service to determine whether the "royalty" payments claimed by the importer are *bona fide* royalty payments and/or are additional payments to the seller based on the resale, disposal or use of the importer merchandise.

Customs does not interpret the Committees' language to require that *bona fide* royalties can only be examined under section 402(b)(1)(D) to determine whether an addition should be made to the price actually paid or payable. In fact, royalty payments may also be dutiable under the assist provision, section 402(b)(1)(C). For example, an importer can arrange for a product to be designed by a company outside of the U.S. In return for the development and use of the design work, the company requires the importer to pay a fee of 5% of the importer's selling price of the product. The importer then supplies the design work, free of charge, to a foreign manufacturer who produces the product.

In this case an assist, design work, has been provided. The value of the assist is the 5% royalty payment. Therefore, the royalty payment becomes dutiable under the assist provision and must be added to the price actually paid or payable for the imported merchandise. Thus, it is clear that *bona fide* royalty payments can become dutiable under provisions other than section 402(b)(1)(D). When the payment is added under the assist provision or similarly, under the proceeds provision, one could reasonably refer to the payment as a "royalty" in quotation marks given

the fact that it was not added to the price actually paid or payable under the royalty provision, section 402(b)(1)(D), but rather was added under the assist or proceeds provision.

Further, as will be discussed in the following section, the prior valuation law did not have either a royalty provision or a proceeds provision. Therefore, it is likely that Congress put the term royalties in quotation marks to emphasize that royalties may not only be dutiable under the new royalty provision but may also be dutiable under the proceeds provision. Finally, while the concept of royalties was present prior to the TAA, the concept of "proceeds of a subsequent resale" was a novel one.

D. *Treatment of Royalties Prior to the TAA:*

In the comments concerning the legislative history of the TAA, many interested parties emphasized the language quoted previously wherein the committee members stated that the existing treatment under the law of royalties for customs purposes was intended to continue under "section 402(b)(1)". The commenters contended that in HRL 544436 Customs deviated from the pre-TAA precedent on the dutiability of royalties.

The valuation regime prior to the TAA was contained in two separate valuation laws, sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401 and 1401a). There were 9 possible standards for customs value under these laws. Five standards in section 402a of the original Tariff Act of 1930, and four standards under a section 402 that was added under the Customs Simplification Act of 1956. The original five standards were used to appraise only those articles for which the dutiable value during fiscal year 1954 would have been 5% less if valued under the new section 402 standards compared to being valued under the old standards. These articles were listed in what was known as the "Final List". *See* T.D. 54521. For purposes of this analysis, we will refer to the bases of appraisement in the Customs Simplification Act of 1956.

Export value, the preferred basis of valuation under the pre-TAA statute, required that the merchandise be appraised at a price at which such or similar merchandise was "freely sold or in the absence of sale, offered for sale" plus the cost of containers and coverings. Further, section 402(f)(1) defined freely sold or offered for sale to mean sales or offers made:

> (A) to all purchasers at wholesale, or
>
> (B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise * * *

There were no specific statutory additions to export value as there was with transaction value. In addition, export value was not based on the actual transaction between the importer and the seller rather the value was based on wholesale prices.

In *U.S. v. Rohner Gehrig & Co., Inc.*, 9 Cust. Ct. 591, R.D. 5724 involving the appraisement of a supercharging blower, Customs determined

that the export value of the blower was the invoice amount from the seller plus $960.00, the amount paid to a third party patent holder for services and a license to use the individual's patented system for construction of a diesel engine that enhanced the performance of the blower. *Id.* The trial court held that the $960.00 fee was not part of the dutiable value of the blower. *Id.*

The Customs Court affirmed the trial court and held that the license fee was not part of the export value of the imported blower. *Id.* at 607. The court based its holding on the fact that the price of the blower did not include the license fee to the patent holder. *Id.* at 604. In addition, there was nothing in the contracts between the manufacturer and the patent holder that prevented the manufacturer and the patent holder that prevented the manufacturer from selling their supercharging blowers to U.S. companies that chose not to purchase the patent holder's system. *Id.* The court pointed out that in fact the manufacturer did sell blowers to firms not using the system.

Based on these facts, the court concluded that the fee collected by the seller for the patent holder was for the right to use the patented system for the production of a diesel engine in the U.S. and not for the right to use the manufacturer's blower. *Id.* at 606. Moreover, the court reasoned that the importation did not consist of a diesel engine manufactured under the patent, rather it constituted only a blower which was purchased for the use in the manufacture of the engine. *Id.* In sum, the court stated that there was no royalty involved in the production or sale of the supercharging blower, which constituted the importation.

A second case decided under the previous valuation law is *BBR Prestressed Tanks, Inc. v. U.S.,* 64 Cust. Ct. 787; A.R.D. 265 (1970). In *BBR,* the court addressed whether a payment of $11,065 made by the importer pursuant to a license agreement was part of the export value of an imported machine. Under the license agreement, the importer was required to pay a fee to a related party for each machine purchased. *Id.* at 788. However, the trial court found that the fee was being paid to the seller.

The trial court held that the fee was part of the purchase price for the imported merchandise and was included in the export value. The Customs Court affirmed the trial court. *Id.* at 791. The court emphasized the trial court's finding that the license fee was in reality a disguised portion of the price. *Id.* at 790. The Customs Court found that the evidence supported this finding due to the fact that the "so-called royalty" fee was not optional, but rather had to be paid to the seller for each machine.

A third case involving the dutiability of royalties and license fees that was cited by several commenters is *U.S. v. Imperial Products, Inc.,* 65 CCPA 38, C.A.C. 1203, 570 F.2d 337 (1978). The imported merchandise involved in *Imperial Products* was cloth brush heads for two types of brushes. For one type of brush, the importer contracted to purchase all of the brush heads from one foreign seller. The importer also agreed to pay the seller a royalty of 7 cents each for one-third of the total brush

heads purchased. *Id.* at 854. The brush heads were to be used to make the first type of brush utilizing a handle patented by the seller. *Id.* The brush heads could also be used for the second type of brush that used a nonpatented handle. The royalty fee was based on the fact that one-third of the heads were to be used with the patented handles. *Id.*

The Customs Court held that the royalty payments were not dutiable under export value. The court based this holding on the rationale that "the royalty on the brush heads was a sum paid for a bona fide right obtained from the exporter which is in addition to and separate from the purchase price of the involved merchandise." *Id.* at 855–856. The court determined that the royalty was paid for the right to manufacture and sell the first type of brushes with the patented handle in the U.S. Moreover, the court found that while the patented handle required a brush head to be operative, the brush head purchased from the seller was not necessary for that purpose. *Id.* at 856. Rather, any brush head would do. *Id.*

Finally, the *Imperial Products* case contains the following language that was included in several comments:

> A royalty fee may or may not be part of the dutiable value. When a royalty is paid on each and every importation and is inextricably intertwined with the imported merchandise such fee is part of the dutiable value. *BBR Prestressed Tanks, Inc. v. U.S.,* 64 Cust. Ct. 787, A.R.D. 265 (1970); *Erb & Gray Scientific, Inc. v. U.S.,* 53 CCPA 46, C.A.D. 875 (1966). When the fee is not inextricably intertwined with the production of the imported merchandise or is optional or is paid for the exclusive right to manufacture and sell in a designated area it is not dutiable. *U.S. v. Rohner Gehrig & Co.,* 9 Cust. Ct. 591, R.D. 5724 (1942).

In analyzing the effect of the cases on the dutiability of royalties and proceeds under the TAA, we must again point out that there were no statutory additions to the freely offered price under export value with the exception of the cost of shipment containers and coverings. Thus, if one was attempting to use the identical analysis under the TAA as was used by the Customs Court in these cases, the analysis would be to determine whether the payments at issue were part of the price actually paid or payable for the imported merchandise. However, given the fact that HRL 544436 dealt with the statutory additions to transaction value, the cases will be examined from that perspective.

The factors that the court used in the old law cases to determine whether a royalty was dutiable were as follows:

(1) *Was the imported merchandise manufactured under patent?* In *U.S. v. Rohner Gehrig & Co., Inc.,* supra. at 9 the court decided "no" based on the fact that the patent covered a method or process for supercharging diesel engines. The type of blower, *i.e.,* the imported blower was not required or covered by the patent. A "no" answer points toward nondutiability.

In *Imperial Products, supra.* at 10, the court also answered "no" to this question. The court found that the imported brush heads were not patented, but rather the brush handles were patented. In addition, the imported brush heads were not required for the patented handle, any brush head was acceptable.

On the other hand, if the answer to this question is "yes" the merchandise was manufactured under patent, then the royalty payment must be examined further to confirm that the payment is dutiable. In the Statement of Administrative Action ("the SAA") Congress addressed this point by stating that "royalties and license fees for patents covering processes to manufacture the imported merchandise will generally be dutiable * * *."

(2) *Was the royalty involved in the production or sale of the imported merchandise?* This question expands the analysis of question one. Again in *Rohner,* the court said "no" based on the finding that the fee was for the right to use the patent system in the U.S. not the right to use the blower manufactured by the seller. A "no" answer points to nondutiability. Conversely, a "yes" answer would point to a conclusion that the royalty payment is dutiable.

Similarly, in *Imperial Products,* the court found that the royalty on the imported brush heads was for the right to use those brush heads in the U.S. with the patented handles and to sell the finished brushes in the U.S. That right was separate from the purchase price of the imported brush heads.

The analysis involved in answering questions one and two is consistent with the previously quoted language from the Statement of Administrative Action. As stated, Congress provided in the SAA that "royalties and license fees for patents covering processes to manufacture the imported merchandise will generally be dutiable * * *." In *Rohner* and *Imperial Products* the court found that the royalties and license fees were not paid for patents covering processes to manufacture the imported merchandise.

Although the old case law that has been cited does not address the dutiability of payments made for the use of trademarks and copyrights, Congress states in the SAA that "royalties and license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the merchandise, will generally be considered as selling expenses of the buyer and therefore will not be dutiable." Several sentences later, Congress says that

> if the buyer pays a third party for the right to use, in the United States, a trademark or copyright relating to the imported merchandise, and such payment was not a condition of the sale of the merchandise for exportation to the United States, such payment will not be added to the price actually paid or payable. However, if such payment was made by the buyer as a condition of the sale of the merchandise for exportation to the United States, an addition will be made.

Finally, Congress stated that "an addition will be made for *any* royalty or license fee paid by the buyer to the seller, unless the buyer can establish that such payment is distinct from the price actually paid or payable for the imported merchandise, and was not a condition of the sale of the imported merchandise for exportation to the United States" (emphasis added).

(3) *Could the importer buy the product without paying the fee?* In *BBR Prestressed Tanks, Inc. v. U.S., supra.* at 10 the court said "no". This was based on the fact that the fee had to be paid on each imported machine. That, is the payment of the fee was not optional. Interestingly, the court took the payments out of the characterization of "license fees" and found that the payments were simply part of the purchase price. This appears to be based primarily on the fact that the required payments went to the seller. *See also, Erb & Gray Scientific, Inc. v. U.S.,* 53 Cust. Ct. 46 (1966). Thus, if the fee is not optional, the court would find that the fee was dutiable under export value.

On the other hand, in *Imperial Products, supra.* at 10, the court answered "yes" to this question. The court found that the royalty was not paid on all of the imported brush heads, but only on one third. Therefore, the importer could buy the product without paying the fee.

The answer to question 3 goes to the heart of whether a payment is considered to be a condition of sale. The old case law establishes that payments that must be made for each imported item are dutiable. However, given the fact that the export value language was different than the transaction value language, these payments may be dutiable as royalty payments, as part of the price actually paid or payable or as proceeds if the payments become due upon the resale, disposal or use of the imported merchandise.

III. Application of Statutory Language and Legislative History to HRL 544436

In HRL 544436, the importer agreed to pay the seller between 5% or 7% of the "Invoice Price" of the imported merchandise. The rate varied by product depending upon the profit level of the importer. The "invoice price" was defined as the importer's "Invoice Price minus Seven Percent (7%) to cover any and all deductions and allowances." All of the payments which were described in the agreement as royalties accrued upon the sale of the products, regardless of the time of collection by the buyer. However, the buyer was to commence the payments within thirty days after the calendar quarter in which the buyer first sold the product.

In the same agreement, the seller agreed to "make available" the imported merchandise and the buyer agreed to purchase the imported merchandise. The specific products covered by the agreement were listed in the agreement. The individual sale agreements or purchase contracts made between the parties were to be subject to the terms and conditions of the agreement.

Further, under the agreement, the seller granted the buyer the exclusive right to sell the imported products as well as the right to manufacture or subcontract the manufacturing of the products. The seller's grant included the rights under any patents and/or copyrights, if any, that existed on the products within the designated territory which included the U.S.

In HRL 544436, Customs held that the payments were not dutiable under the royalty provision, section 402(b)(1)(D) but rather were dutiable under section 402(b)(1)(E) as proceeds of the subsequent resale of the merchandise that accrued to the seller. Customs cited three Headquarters Ruling Letters addressing the dutiability of royalty payments as the basis for holding that the payments in HRL 544436 would not be dutiable under the royalty provision.

In the cited rulings, HRL 542844, dated June 17, 1982, HRL 544061, dated May 27, 1988, and HRL 544129, dated August 31, 1988, one of the major factors for determining whether the royalty was not dutiable was whether the royalty payments were calculated on the basis of sales that occurred subsequent to the importation of the merchandise. After the extensive analysis that has been undertaken as a result of the comments received on HRL 544436, Customs has concluded that the method of calculating the royalty, *e.g.*, on the resale price of the goods, is not relevant to determining the dutiability of the royalty payment. Rather, Customs finds that the three questions that are listed on pages 11–13 are the relevant questions that must be answered. These questions assist Customs in determining whether the payments are related to the merchandise and were a condition of sale.

Upon further review of the facts in HRL 544436, it is unclear whether the imported merchandise was manufactured under patent, although, the importer was granted the right to use any patents that existed on the products in the designated territory. Second, it does appear that the royalty (the term used by the parties in the agreement) was involved in the sale of the imported merchandise. This is based on the facts that the individual sales agreements or purchase contracts were subject to the terms and conditions of the royalty agreement.

Further, the royalty was to be paid on each imported item that was purchased by the seller. Finally, as Congress stated in the SAA "an addition will be made for *any* royalty or license fee paid by the buyer to the seller, unless the buyer can establish that such payment is distinct from the price actually paid or payable for the imported merchandise, and was not a condition of the sale of the imported merchandise for exportation to the United States" (emphasis added). In HRL 544436, the facts fail to establish that the payments were not a condition of sale. As a result, the royalty payments could have been considered to be dutiable under section 402(b)(1)(D).

Notwithstanding, Customs still finds that the payments are also dutiable as proceeds of a subsequent resale that accrued directly to the seller. That is, Customs finds that HRL 544436 involves the type of situ-

ation that Congress explained in the Committee reports by stating that "certain elements called "royalties" may fall within the scope of the language under either new section 402(b)(1)(D) or 402(b)(1)(E) *or both*" (emphasis added). H.R. Rep. No. 317, 96th Cong., 1st Sess (1979) at 80 and S. Rep. No. 249, 96th Cong., 1st Sess., at 120 (1979).

Under the facts of HRL 544436, the importer's obligation to pay the seller accrued upon the sale of the imported products. The amount of the payments were based on the resale price of the imported merchandise (7% of the "invoice price"). Generally, proceeds are defined as "issues; income; yield; receipts; produce; money or articles or other thing of value arising or obtained by the sale of property; the sum, amount, or value of property sold or converted into money or into other property." Black's Law Dictionary, 6th ed., 1990 at p. 1204. Another definition of proceeds in "what is produced by or derived from something (as a sale, investment, levy, business) by way of total revenue: the total amount brought in * * *." Webster's Third New International Dictionary 1986.

In applying this definition in the context of 402(b)(1)(E) the income produced from the subsequent resale, disposal, or use of the imported merchandise that accrues directly, or indirectly, to the seller is added to the price actually paid or payable for the imported goods. In HRL 544436, the seller received 7% of income from the subsequent resale of the imported merchandise. Thus, the payments from the buyer to the seller constituted proceeds of the subsequent resale of the imported merchandise and were to be added to the price actually paid or payable for the imported merchandise.

IV. Effective Date

Several parties submitting comments on HRL 544436 urged Customs to delay the effective date of the conclusions reached after an analysis of the comments. while it is clear that HRL 544436 was decided based on the specific set of facts presented, and remains valid for that set of facts, Customs does find the request for a delayed effective date by other importers that do not have rulings on their particular facts to be reasonable. Therefore, use of the analysis and conclusions set forth in this document will begin with merchandise entered 90 days from the date of publication in the Customs Bulletin. Importers are encouraged to contact the appropriate Customs field personnel to discuss the processing of their specific entries.

Dated: January 21, 1993.

Samuel H. Banks,
Assistant Commissioner,
Commercial Operations.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

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Decisions of the United States Court of International Trade

(Slip Op. 93–6)

FORMER EMPLOYEES OF MERROW MACHINE CO., PLAINTIFFS *v.* LYNN MARTIN, U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 92–01–00002

[The determinations of Labor are not supported by substantial evidence on the record and the action is remanded.]

(Dated January 19, 1993)

Ross & Hardies (*Michelle F. Forte, Joseph S. Kaplan,* and *David F. Norton*), for plaintiffs.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Jane E. Meehan* and *Reginald T. Blades, Jr.*), *Michelle Curran,* Attorney-Advisor, United States Department of Labor, of Counsel, for defendant.

OPINION

CARMAN, *Judge:* Plaintiffs, former employees of Merrow Machine Company, Newington, Connecticut, challenge the determinations of the Secretary of Labor (Labor) that they are ineligible for trade adjustment assistance under 19 U.S.C. § 2272 (1988). This Court has jurisdiction pursuant to 19 U.S.C. § 2395 (1988), and 28 U.S.C. § 1581(d)(1) (1988).

After considering the arguments of the parties and the administrative record, the Court holds that the determinations by the Secretary of Labor are not supported by substantial evidence on the record. The case is remanded to Labor for further investigation in accordance with this opinion.

BACKGROUND

The Merrow Machine Company (Merrow), located in Newington, Connecticut, is a privately held corporation that manufactures industrial sewing machines and replacement parts used in the garment making industry. Administrative Record at 19 (hereinafter R.). Merrow is the only remaining domestic manufacturer of industrial sewing machines. R. 19. The majority of Merrow's business comes from the exportation of its products, and these exports have continued to increase. R. 19.

Upon receipt of a petition for certification filed by three former employees of Merrow dated June 28, 1991, the Office of Trade Adjustment Assistance initiated an investigation on July 22, 1991. R. 2, 16. The three employees are John Vallera, a manufacturing supervisor, Sandra B. Wodecki, an inspector, and Randall J. Hoff, a maintenance worker. Both Mr. Vallera and Ms. Wodecki were separated from their respective positions on January 1, 1991, while Mr. Hoff was separated from his position on February 2, 1991. R. 2.

The investigation conducted by Labor consisted of a table compiled by the Department of Commerce showing the value of imports of sewing machines in 1989 and 1990; a data package completed by Mr. John M. Washburn, Jr., President of Merrow; and the results of a survey from some of Merrow's customers. R. 16–35. The investigation found that the value of United States imports of industrial sewing machines decreased absolutely in the period January–September 1990 as compared with the same period in 1989. R. 17–18, 38. Labor discovered in its investigation that, according to customer comments, none of the customers surveyed imported sewing machine parts. One customer indicated in its comments that the Merrow sewing machine was designed in such a manner that replacement parts needed to be manufactured by Merrow. *Merrow Machine Co.; Newington, CT; Negative Determination Regarding Application for Reconsideration,* 56 Fed. Reg. 65,510 (Dec. 19, 1991) (hereinafter *Negative Reconsideration Determination*).

Based on its investigation, Labor issued a negative determination denying certification of eligibility to apply for trade adjustment assistance. *Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance,* 56 Fed. Reg. 55,690 (Oct. 29, 1991). R. 38. Labor determined that plaintiffs had failed to meet the eligibility requirement contained in 19 U.S.C. § 2272(a)(3). *Id.*

On November 5, 1991, plaintiffs requested administrative reconsideration of Labor's negative determination. R. 43–44. This request was denied by Labor on November 29, 1991. *Negative Reconsideration Determination,* 56 Fed. Reg. 65,510. Plaintiffs then commenced this action to seek judicial review of Labor's negative determinations on January 3, 1992.

Contentions of the Parties

Plaintiffs contend Labor's negative determinations are not supported by substantial evidence on the record and are not in accordance with law. Plaintiffs claim that the underlying investigation that formed the basis for these determinations was inadequate. In particular, plaintiffs point to the insufficiency of Labor's survey of Merrow's customers, the lack of verification by Labor, and the inadequate investigation of imports of sewing machine replacement parts. Plaintiffs request that the Court order this case be remanded to Labor for the purpose of reopening the investigation on the merits of certifying plaintiffs' eligibility for trade adjustment assistance.

Defendant opposes plaintiffs' motion for judgment on the agency record and requests the Court to affirm the contested determinations. Labor contends the administrative record contains substantial evidence to support its determination. Defendant claims plaintiffs failed to satisfy the following eligibility criterion for trade adjustment assistance:

> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

19 U.S.C. § 2272(a)(3).

STANDARD OF REVIEW

A negative determination by the Secretary of Labor denying certification of eligibility for trade adjustment assistance will be upheld if it is supported by substantial evidence on the record and is otherwise in accord with law. *See Woodrum v. Donovan,* 5 CIT 191, 193, 564 F. Supp. 826, 828 (1983), *aff'd sub nom. Woodrum v. United States,* 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984). The findings of fact by the Secretary are conclusive if supported by substantial evidence. 19 U.S.C. § 2395(b). "Substantial evidence is something more than a 'mere scintilla,' and must be enough reasonably to support a conclusion." *Ceramica Regiomontana, S.A. v. United States,* 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986), *aff'd,* 5 Fed. Cir. (T) 77, 810 F.2d 1137 (1987) (citations omitted).

DISCUSSION

The question before the Court is whether Labor properly decided that plaintiffs are ineligible for trade adjustment assistance. Trade Adjustment Assistance benefits are intended to offer unemployment compensation, training, job search and relocation allowances, and other employment services to workers who lose their jobs because of import competition. *See Former Employees of Linden Apparel Corp. v. United States,* 13 CIT 467, 467, 715 F. Supp. 378, 379 (1989).

The Department of Labor must follow the requirements of 19 U.S.C. § 2272, when determining whether a group of workers is eligible for trade adjustment assistance benefits. The statute is as follows:

> (a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this part if he determines—
>
> > (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
> >
> > (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
> >
> > (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an ap-

> propriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

Employees must meet all three statutory criteria to be certified as eligible for trade adjustment assistance.

A reviewing court may remand a case and order the Secretary to further investigate if "good cause [is] shown. 19 U.S.C. § 2395(b). 'Good cause' exists if the Secretary's chosen methodology is 'so marred that [his] finding is arbitrary or of such a nature that it could not be based on substantial evidence.'" *Former Employees of Linden Apparel Corp.*, 13 CIT at 469, 715 F. Supp. at 381 (citations omitted). A remand was deemed warranted in *Linden,* "because the Secretary conducted an inadequate investigation, thereby failing to reach substantiated conclusions." *Id.*

Subsection 3 of 19 U.S.C. § 2272(a), requires Labor to determine whether there has been any "*increases of imports* of articles like or directly competitive with articles produced by" Merrow (Emphasis added). Labor stated in its October 10, 1991, Negative Determination that "U.S. imports of industrial sewing machines decreased absolutely in January–September 1990 compared with the same period in 1989." R. 38. The only evidence in the record that provides statistics of imported sewing machines during the quoted period is a table prepared by the Department of Commerce. R. 17. This table, however, does not provide information regarding the *quantity* of sewing machines imported, it only indicates the *value* of imported industrial sewing machines. Subsection 3 of 19 U.S.C. § 2272(a) does not refer to value of imports, but rather "increases of imports." This requires a determination of the *quantity* of imports. As noted in *United Rubber, Cork, Linoleum and Plastic Workers of America, Local 798 v. Donovan,* it is possible to have an absolute decrease in the *value* of imports without necessarily having an absolute decrease in the *quantity* of imports. 652 F.2d 702, 704 (7th Cir. 1981). Thus, Labor did not base its conclusion, that imports of industrial sewing machines decreased absolutely, on substantial evidence.

In its investigation, Labor found that nearly half of Merrow's sales were from sewing machine parts. R. 47. Plaintiffs argued that increased imports of sewing machine parts could provide a basis for certification. R. 44, 47, 48. Plaintiffs claimed that Labor's survey was inadequate since it did not include sewing machine parts. *Id.* In its Negative Determination Regarding Application for Reconsideration, the Department claimed it investigated both sewing machines and sewing machine parts: "Although not specifically mentioned in the Department's denial notice, its survey was for sewing machines and sewing machine parts." R. 49. The case investigator's report stated that the survey was for "industrial sewing machines as well as parts for same (replacement components, etc.)." However, throughout its investigative report, Labor referred exclusively to sewing machines. Furthermore, although cer-

tain customers appeared to have made independent comments concerning parts, the customer survey sheets used in the investigation label the product being surveyed as sewing machines and do not mention industrial sewing machine parts.

Regardless of the adequacy of this investigation of industrial sewing machine parts, Labor argues that "[c]ustomer comments show that the Merrow sewing machine was so designed that it had to use parts from The Merrow Machine Company. Accordingly, increased imports of other sewing machine parts would not provide a basis for a worker group certification." R. 47, 49. The "customer comments" that Labor refers to amounted to a brief comment from [confidential]. There is not substantial evidence in the record supporting Labor's conclusion that "imports of other sewing machine parts would not provide a basis for a worker group certification."

Plaintiffs allege there are certain replacement parts, such as "loopers," which are generic. Plaintiffs' Brief at 10. Thus, imports of those parts could substitute for Merrow-made parts and possibly provide a basis for certification. "The relevant inquiry in this regard is whether demand for [the domestic product and import] is cross-elastic, that is, whether [the domestic product and the import] are 'substantially equivalent for commercial purposes (i.e. adapted to same uses and essentially interchangeable therefore).'" *United Rubber,* 652 F.2d at 705 (citations omitted). If Labor determines by substantial evidence on the record that only Merrow-produced machine parts can be used on Merrow machines, then any imported industrial sewing machine parts would not be cross elastic. However, Labor must determine whether there have been increases of imports of industrial sewing machine parts like or directly competitive with industrial sewing machine parts produced by Merrow in order to satisfy 19 U.S.C. § 2272(a)(3).

Plaintiffs raise the issue of whether Labor should have surveyed any prior customer who may have switched to foreign made machinery, rather than solely focusing its survey on customers who were then ordering Merrow sewing machines. Labor is directed to determine whether such an expansion of its survey would be appropriate.

CONCLUSION

The Court concludes there is not substantial evidence on the record to support Labor's determinations denying eligibility for trade adjustment assistance to plaintiffs and that there is good cause to remand this matter to Labor for a new investigation and redetermination in accordance with this opinion. Labor shall submit the results of the completed remand redetermination to this Court within 60 days from the date of this opinion.

(Slip Op. 93–7)

ITT CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 90–12–00674

[Judgment for defendant.]

(Dated January 19, 1993)

Barnes, Richardson & Colburn, (*Rufus E. Jarman, Jr.* and *Despina Keegan*) for plaintiff.

Stuart M. Gerson, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, United States Department of Justice, Civil Division (*Carla Garcia-Benitez*); *Karen P. Bender,* United States Customs Service, Office of the Assistant Chief Counsel, International Trade Litigation, of counsel, for defendant.

OPINION

RESTANI, *Judge:* This action is before the court for decision following trial *de novo.* The United States Customs Service ("Customs") classified the merchandise at issue under item 692.32, Tariff Schedules of the United States (1985) ("TSUS"). Plaintiff seeks classification under item 692.24, TSUS. The items read as follows:

> Chassis, bodies (including cabs), and parts of the foregoing motor vehicles * * *:
> Other:
> 692.24 Cast-iron (except malleable cast-iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery
> Other:
>
> * * * * * * *
>
> 692.32 Other:

In particular, this action challenges the denial of plaintiff's protest of a decision refusing reliquidation of the merchandise under item 692.24 pursuant to 19 U.S.C. § 1520(c)(1) (1988), which provides in pertinent part:

> Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—
>
> (1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction.

The Customs Service's regulations implementing 19 U.S.C. § 1520(c)(1) provide:

> (a) *Authority to review and correct.* Even though a valid protest was not filed, the district director, upon timely application, may correct

> pursuant to section 520(c)(1) [)], Tariff Act of 1930, as amended, (19 U.S.C. 1520(c)(1), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.
>
> (b) *Transactions which may be corrected.* Correction * * * may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:
>
> (1) Does not amount to an error in the construction of a law;
> (2) Is adverse to the importer; and
> (3) Is manifest from the record or established by documentary evidence.

19 C.F.R. § 173.4 (1990).

1. *Classification issues:*

The evidence adduced at trial demonstrated that the automobile parts at issue were, in chief value, cast iron and were not malleable, not alloyed, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery. In other words, they matched the wording of plaintiff's claimed classification. Defendant's witness articulated a suspicion that the merchandise was machined in an impermissible manner, but he did not support this view. Accordingly, following trial the court found the cast iron parts at issue fit squarely within item 692.24. Trial Transcript at 158.

The only issue left outstanding as to the classifiability of the merchandise under item 692.24 concerned some parts containing a steel insert, which insert was valued at less than fifty percent of the value of the entire part. These composite parts were in chief value of cast iron. Trial Transcript at 45. Although item 692.24 does not use the word "of," there appears to be no dispute that item 692.24 covers articles *of cast iron. See* Trial Transcript at 107 and Defendant's Post Trial Brief at 9. General Headnote 9(f)(i) of TSUS indicates that the chief value of the material will determine the classification of a composite article in such a case.[1]

Following trial, however, the government cited Headnote 2(a) of Schedule 6, Part 2, Subpart B, TSUS (1985), which reads in part:

> 2. *Grades of Iron, Steel, and Ferroalloys.—For the purposes of the tariff schedules,* the following terms have the meanings hereby assigned to them:
>
> (a) *Pig iron (except vanadium or titanium pig iron) and cast iron:* A ferrous product (not including steel, as defined in (g) of

[1] Headnote 9(f)(i) provides:

9. *Definitions.* For the purposes of the schedules, unless the context otherwise requires—

* * * * * * *

(f) the terms "of", "wholly of", "almost wholly of", "in part of" and "containing", when used between the description of an article and a material (e.g., "furniture *of* wood", "woven fabrics, *wholly of* cotton", etc.), have the following meanings:

(i) "of" means that the article is wholly or in chief value of the named material;

* * * * * * *

General Headnote 9(f)(i), TSUS (1985).

> this headnote) containing, by weight, 1.9 percent or more of carbon, and which may contain one or more alloy elements within the respective weight limits specified below: * * *. (Emphasis added)

The government argues that this headnote prevails over General Headnote 9(f) and normal classification practice. Thus, it argues any steel content will prevent classification as cast iron.

Headnote 2 of Schedule 6 would not seem to be on point. It merely states that even if steel is 1.9 percent or more carbon and contains less than the listed amount of alloy element, steel is not pig iron or cast iron. This headnote has nothing to do with classification of a composite part comprised in chief value of cast iron with an insert made of steel, not pig iron or cast iron.

2. *Reliquidation:*

Having found that the merchandise at issue was classifiable under item 692.24, the court turns to the real point of controversy. The government asserts that plaintiff failed to meet two of the conditions for reliquidation set forth in 19 U.S.C. § 1520(c)(1), that is, that the error not be one of law and that the error be demonstrated to Customs.[2] The government's first argument is that plaintiff misunderstood the nature of the law rather than the nature of the merchandise when it entered the imported castings under item 692.32 as finished automotive parts. The court finds the distinction between law and fact not particularly clear in this area. In this case, however, the essential error appears to be one of fact, and the court so held at trial. Trial Transcript at 158. In essence, in filling out the Customs entry forms, the importer's agent used company records applicable to parts which were finished to a greater degree and which were to be sent to a different customer. Trial Transcript at 60–61, 65–66. If there was a disputed point of law at the time of entry, it was not pointed out to the court. The law seems clear; the document preparer simply understood the nature of the merchandise to be other than what it was. Thus, a mistake of fact occurred. *C.J. Tower & Sons of Buffalo, Inc. v. United States,* 68 Cust. Ct. 17, 22, 336 F.Supp. 1395, 1399 (1972) (finding a mistake of fact), *aff'd,* 61 CCPA 90, 499 F.2d 1277 (1974); *see also Hambro Automotive Corp. v. United States,* 66 CCPA 113, 118, 603 F.2d 850, 854 (1979) (finding a mistake of law). The purpose of section 1520 is to allow correction of such mistakes and neither the government nor the courts should struggle excessively to turn mere bumbling into a controversy over law.

The finding that plaintiff made a mistake of fact in its suggested classification of the merchandise does not end the inquiry, however. The problem for plaintiff is that it never told Customs with any specificity

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[2] The statute provides in part that "the appropriate customs officer may * * * reliquidate an entry to correct * * * [a] mistake of fact * * * manifest from the record or established by documentary evidence." 19 U.S.C. § 1520(c)(1). The plain meaning of the statutory language leads to the conclusion that the mistake of fact must be manifest from the record and documentary evidence available to Customs at the time of the reliquidation decision. This court rejects the view that "record" as used in the statute can also refer to the record placed before a court conducting judicial review of Customs' reliquidation decision.

how it came to misclassify the merchandise. It simply said "[a] mistake of fact occurred in the initial creation of the broker's records * * *. The understanding was that these castings were actually brake parts classifiable under TSUS 692.32." Plaintiff's Exhibit 7. Samples were also submitted. *See, e.g.,* Plaintiff's Exhibit 8. The question is, what must the importer affirmatively establish prior to Customs' determination on the section 1520(c)(1) claim. In other words, does the importer satisfy its burden of production merely by notifying Customs that the importer believes a mistake of fact has occurred, or must the importer affirmatively establish both the existence of a mistake of fact and the correct classification of the merchandise. The government claims the latter is required.

First, the court should dispose of the issue of whether the one-year time limit for filing a section 1520 claim applies to the submission of data necessary to support it. 19 U.S.C. § 1520(c)(1). This issue was resolved in *George Weintraub & Sons, Inc. v. United States,* 12 CIT 643, 691 F.Supp. 1449 (1988) and *C.J. Tower,* 68 Cust. Ct. 17, 336 F.Supp. 1395. *C.J. Tower,* in particular, makes clear that the one-year time limit does not apply to efforts to document the error. *See* 68 Cust. Ct. at 23, 336 F.Supp. at 1400; *see also Weintraub,* 12 CIT at 644, 691 F.Supp. at 1451 ("The one year provision of § 1520(c) requires only that the mistake be brought to the attention of the Customs Service" (citing *C.J. Tower*)). On the other hand, a party who waits past the time of filing its 19 U.S.C. § 1520(c)(1) request to file supporting documentation risks an adverse decision by Customs in the interim. In *C.J. Tower* the appropriate data was filed after the one-year limit, but before Customs had decided the reliquidation claim. 68 Cust. Ct. at 18–19, 336 F.Supp. at 1396–97. In this case plaintiff waited for trial before this court to present the bulk of its evidence. Defendant's Pretrial Memorandum of Law at 29.

Second, although trial before this court is *de novo* under 28 U.S.C. § 2640(a)(1) (1988), the right to reliquidation based on mistake is provided by statute and the statutory requirements must be met. The court may consider all evidence and is not bound by Customs' disposition of the issues, but if insufficient evidence demonstrating error is submitted to Customs the statute will not be met and the outcome will be the same. *See PPG Industries, Inc. v. United States,* 4 CIT 143, 147–48 (1982) ("The burden and duty is upon the plaintiff to inform the appropriate Customs official of the alleged mistake with 'sufficient particularity to allow remedial action'" (citation omitted)).

The sample merchandise which was submitted to Customs does not answer the relevant questions. Apparently, it is not obvious to persons knowledgeable in the field from visual examination, whether a part meets or does not meet the requirements of item 692.24. Testimony is needed to explain, *inter alia,* that the parts are not machined beyond that allowed by the statute. Furthermore, it was not made clear to Customs that a mistake of fact, rather than one of law, actually

occurred.[3] These facets of the inquiry are not entirely distinct. Efforts to explain the exact nature of the mistake might also have led to a demonstration of the correct classification. In sum, plaintiff provided insufficient information to require Customs to grant or make further inquiry into its 19 U.S.C. § 1520(c)(1) claim for reliquidation based on mistake of fact. The nature of the error and the correct classification was not manifest from the record or established by documentary evidence before Customs rendered its decision. Judgment will be entered for the United States.

(Slip Op. 93–8)

FORMER EMPLOYEES OF HEWLETT-PACKARD CO., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 92–02–00072

[Final determination by the Department of Labor remanded.]

(Dated January 21, 1993)

Edward P. Van Pelt, pro se, for plaintiffs.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, (*Jane E. Meehan*), *Scott Glabman,* of counsel, United States Department of Labor, for defendant.

MEMORANDUM AND ORDER

GOLDBERG, *Judge:* Plaintiffs, former employees of Hewlett-Packard Company, challenge the determination of the Secretary of Labor ("Labor") that they are ineligible for trade adjustment assistance under 19 U.S.C. § 2272(a)(1) (1988). *Koh-l-Noor Rapidograph, et al.,* 56 Fed. Reg. 58711 (Dept Labor 1991) (Negative Eligibility Determination); *Hewlett-Packard Co., Rockaway, N.J.,* 56 Fed. Reg. 67103 (Dept Labor 1991) (Application for Reconsideration Dismissal). This Court has jurisdiction pursuant to 19 U.S.C. § 2395 (1988) and 28 U.S.C. § 1581(d)(1) (1988).

After considering the argument of the parties and the administrative record, the court holds that the determination by Labor should be remanded. The court holds that Labor's determination is not in accordance with the law.

BACKGROUND

On October 2, 1991, a petition for certification for trade adjustment assistance ("TAA") benefits pursuant to 19 U.S.C. § 2271 (1988) was

[3] As noted above, plaintiff's claim for reliquidation stated, "[a] mistake of fact occurred * * *. The understanding was that these castings were actually brake parts classifiable under TSUS 692.32." Plaintiff's Exhibit 7. Both items 692.32 and 692.24 may cover "brake parts." Thus, while asserting a mistake of fact, the claim describes what seems to be a mistake of law.

filed with Labor by Mr. Edward P. Van Pelt, a former employee of Hewlett-Packard's plant in Rockaway, New Jersey, representing approximately thirty-four former workers in the metal fabrication shops of Hewlett-Packard's Rockaway plant. Workers in these shops produced chassis and hardware components of the equipment manufactured by the plant. According to the petition, the anticipated date of separation of the workers was January 31, 1992.

Labor initiated an investigation with regard to the petition. On October 17, 1991, Labor requested data from Hewlett-Packard for its investigation. Hewlett-Packard responded by letter dated November 1, 1991 and indicated that Hewlett-Packard had not involuntarily terminated any employees. Hewlett-Packard therefore requested that further participation by it be excused.

Based upon the results of its investigation, Labor issued its determination on November 8, 1991, denying the petition for worker certification. Labor stated that criterion (1) of section 222 of the Trade Act of 1974, 19 U.S.C. § 2272 (a)(1) (1988), was not satisfied because Hewlett-Packard had not separated workers at the Rockaway plant.

On November 26, 1991, Mr. Van Pelt requested administrative reconsideration of Labor's denial of TAA certification, arguing that Labor's decision had not properly taken into account that the jobs of the employees who took the voluntary severance package were eliminated and that no jobs at comparable skill levels or pay were available within the company. Labor dismissed the application on December 11, 1991 for lack of sufficient evidence pursuant to 29 CFR § 90.18(C). Labor found that:

> there were no involuntary layoffs at Rockaway. The company offered an Enhanced Early Retirement Program and a Voluntary Separation Incentive package in 1991 to the Rockaway employees. The distinguishing feature of each program was a voluntary decision to leave in return for separation benefits. No employee was involuntarily terminated and all could have continued their employment with Hewlett Packard.

This dismissal constituted a final determination for purposes of judicial review.

Petitioner filed for judicial review on February 5, 1992, within 60 days from the date Labor's decision was published in the Federal Register.

Claims

Plaintiffs contend that Labor wrongly denied certification for TAA benefits because it failed to take into account the job elimination aspect of the voluntary separations. Plaintiffs concede that the company did not separate workers without providing for alternate positions within the company. Rather, plaintiffs complain that the alternative positions provided by the company with respect to workers in the metal fabrication shops were not at comparable pay or skill levels.

Defendant argues that the workers were not severed or suspended from pay status by the company, but left voluntarily in order to take advantage of the company's severance offer. According to defendant, all of

the workers could have continued employment with the company. Consequently, plaintiffs were not "totally" or "partially" separated within the meaning of the statute and the implementing regulations.

Standard of Review

A negative determination by Labor denying certification of eligibility for TAA benefits will be upheld if it has been made in accordance with the law, and is supported by substantial evidence contained in the administrative record. *See Woodrum v. Donovan,* 5 CIT 191, 193, 564 F. Supp. 826, 828 (1983), *aff'd sub nom. Woodrum v. United States,* 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984).

Discussion

Pursuant to 19 U.S.C. §§ 2272(a) (1988), the following eligibility requirements must be met in order to qualify for TAA certification:

> (a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this part if he determines—
>
> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

19 U.S.C. § 2272(a) (1988) (emphasis added).

The question before the court is whether Labor, in deciding that plaintiffs are ineligible for TAA certification because the terminations were voluntary, properly interpreted and applied the term "separated" within the meaning of 19 U.S.C. § 2272(a)(1) (1988).

Referring to the implementing regulations issued by Labor, defendant argues that "total separation" means "the layoff or severance of an individual from a firm or an appropriate subdivision thereof." 29 C.F.R. § 90.2 (1992). A "layoff" is defined as "a suspension from pay status for lack of work initiated by the employer and expected to last for no less than seven (7) consecutive calendar days." 29 C.F.R. § 90.2 (1992). Defendant contends that voluntary separations with benefits or the acceptance of lower paid positions are not separations within the meaning of 19 U.S.C. § 2272(a)(1) (1988) and the implementing regulations.

However, when construing a statute, the duty of the court "is to give effect to the intent of Congress." *Woodrum,* 5 CIT at 194 (quoting *Flora v. United States,* 357 U.S. 63, 65 (1958)). "The court must seek to discern the legislative will, first, by reference 'to the literal meaning of the

words employed'." *Woodrum,* 5 CIT at 194 (quoting *Flora v. United States,* 357 U.S. 63, 65 (1958)). If a literal reading of the disputed provision does not answer the question presented, either because the text is ambiguous or silent as in the present case, the court may look to the entire statutory scheme and to the provision's legislative history in an effort to resolve the question before it. *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.,* 545 F.2d 754, 756–57 (1st Cir. 1976), *cert. denied,* 431 U.S. 904 (1977).

Clearly "[t]he interpretation put on the statute by the agency charged with administering it is entitled to deference * * *." *Federal Election Commission v. Democratic Senatorial Campaign Committee,* 454 U.S. 27, 31–32 (1981). The courts, however, "must reject administrative constructions of the statute, whether reached by adjudication or rulemaking, that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement." *Federal Election Commission,* 454 U.S. at 32.

When Congressional policies extend beyond the scope of the law enacted, it is the legislature that must provide the remedy and not the courts whose task it is to apply the law. *United Shoe Workers v. Bedell,* 506 F.2d 174, 187 (D.C. Cir. 1974).

In determining the proper construction and lawful bounds of the statute in question, the court in *Woodrum,* 5 CIT at 198, found that the remedial nature of the TAA program requires a liberal construction of the statute. Furthermore, in *Former Employees of Parallel Petroleum Corp. v. United States Secretary of Labor,* 14 CIT 114, 119, 731 F.Supp. 524 (1990), this court stated that Congress intended the Trade Act of 1974 "to *liberalize* the availability of adjustment assistance for displaced workers." Moreover, the court also stated that:

> [t]he Court also considers the purposes behind the [TAA] program to be instructive. These benefits are intended to offer unemployment compensation, training, job search and relocation allowances, and other employment services to workers who lose their jobs because of import competition. Without these benefits, workers in many cases would not possess the financial resources nor even the most basic skills necessary to seek employment in new industries. Congress did not propose to subject these workers to endless arguments about legislative intent and definitions of terms in the United States Code, thereby delaying indefinitely the award of any compensation that might eventually be forthcoming. Such delays defeat the remedial purposes of the statute.

Id. at 118 (citation omitted).

Further, the legislative history of the TAA program does not provide any evidence that Congress has made a policy decision and drawn a line between involuntary and voluntary separations that occur in connection with job elimination due to import competition.

The purpose of the TAA program is to offset the negative affects on the work force whose jobs the company has eliminated. Congress intended to "encourage workers who are unemployed because of import

competition to learn the new skills necessary to find productive employment in a changing American economy." S. Rep. No. 71, 100th Cong., 1st Sess. 11 (1987). The program is thus remedial in nature.

Labor's mechanical interpretation of the term "separation" to disqualify workers whose jobs have been eliminated and who leave an affected company voluntarily to take advantage of voluntary incentive programs contradicts the remedial scope intended by Congress. Under Labor's theory, the affected firm would have to fire those workers whose jobs have been eliminated to avoid prejudicing their eligibility for certification. As a result, TAA eligibility becomes a factor in the affected company's decisions leading up to the separations. The court finds that issues regarding whether an affected company should reduce its labor force on a voluntary basis or under circumstances where the company fires those individuals that are to be laid off are business decisions that must be based upon the company's particular situation. There is no evidence in the legislative history that Congress intended the TAA program to impinge on the business decisions involved in the downscaling process in such a manner.

Similarly, exclusion of voluntary incentive programs from eligibility causes the TAA program to act as a barrier to company based adjustment programs that seek to soften the blow for workers adversely affected by job elimination. Considering the purpose of the statute, such employer initiatives should be commended rather than discouraged.

Moreover, there is no basis in the statute for Labor's interpretation that affected employees who refuse to transfer to non-comparable employment outside their downsized departments, but still within the company, are not "separated" within the meaning of the statute. Labor's own implementing regulations define total separation in part, simply as the layoff "from an appropriate subdivision" of the company. 29 CFR § 90.2 (1992).

Clearly, here Labor determined that the metal fabrication shops was the appropriate subdivision for its investigation. (Confidential Record at 15.) Labor also determined that plaintiffs' jobs within the metal fabrication shops were eliminated. Plaintiffs, therefore, were laid off from "an appropriate subdivision" of the company, and were separated. Consequently, the court concludes that the terminations in the instant case were "separations" within the meaning of 19 U.S.C. § 2272(a)(1) (1988).

Conclusion

After considering the arguments of the parties and the administrative record, the court holds that the determination by Labor was not in accordance with the law and should be remanded to allow Labor to determine if the remaining certification requirements under 19 U.S.C. § 2272 (1988) are met.

(Slip Op. 93–9)

CAMARGO CORREA METALS, S.A., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND AMERICAN ALLOYS INC., ET AL., DEFENDANT-INTERVENORS

Consolidated Court Nos. 91–09–00641–S and 91–09–00645–S

OPINION

[Plaintiff moves for judgment on the agency record on the grounds that the ITC failed to consider evidence of voluntary withdrawal of domestic injury from the market, the ITC placed unwarranted emphasis on dumping margins and the ITC decided the case before plaintiffs submitted post-hearing briefs. *Held:* The determination of the ITC is based on substantial evidence and is affirmed.]

(Decided January 22, 1993)

Roger & Wells, (Ryan Trainer) for Camargo Correa Metais, S.A.

Law Offices of Royal Daniel, III, (Royal Daniel, III, Jeri Beth Katz), for Campanhia Brassileira Carbureto de Calico *et al.*

Lyn M. Schlitt, General Counsel, United States International Trade Commission, *James A. Toupin,* Assistant General Counsel, United States International Trade Commission, *(Rhonda M. Hughes)* for The United States of America.

Baker & Botts, (William D. Kramer) for American Alloys, Inc., *et al.*

MUSGRAVE, *Judge:* Plaintiffs Companhia Brasileira Carbureto de Calcio ("CBCC"), Rima Eletrometalurgia S.A. ("RIMA") and Ligas de Aluminio S.A. ("LIASA") challenge the determination of the International Trade Commission ("ITC") that the United States silicon metal industry was materially injured by reason of imports from Brazil, published in *Silicon Metal From Brazil,* USITC Publication 2404 (July, 1991); *Determination, Silicon Metal From Brazil,* 56 Fed. Reg. 37,572 (August 7, 1991). Plaintiff Camargo Correa Metais, S.A. did not file a brief in this proceeding, which has been severed from Court No. 91–09–00641, the International Trade Administration ("ITA") portion of this case.

On April 17, 1991, the ITC published a notice in the Federal Register announcing a consolidated hearing regarding the subject imports from Brazil, Argentina and China, which it held on April 25, 1991. *Silicon Metal From Argentina and Brazil; Institution,* 56 Fed. Reg. 15,632. *Brief of ITC,* at 8. All parties who requested the opportunity were permitted to appear in person or by counsel. Representatives of all plaintiffs appeared. *Id.* at 8–9; *Administrative Record,* List 1, Doc. 226. The Brazilian respondents filed posthearing briefs. Plaintiffs did not object to the consolidated hearing.

The ITC reached its final determinations in the cases of China and Brazil at different times. The ITC unanimously determined on May 22, 1991, that an industry in the United States was materially injured by imports of silicon metal from China. *Silicon Metal From The People's Republic Of China,* 56 Fed. Reg. 27,033 (June 12, 1991); USITC Publication 2385 ("*Silicon Metal I*"). On July 15, 1991, the ITC unanimously determined that an industry in the United States was materially injured

by imports of silicon metal from Brazil. *Determination, Silicon Metal From Brazil,* 56 Fed. Reg. 37,572 (August 7, 1991); *Silicon Metal From Brazil,* USITC Publication 2404 ("*Silicon Metal II*").

Silicon Metal II, at 15, states,

> The Commission has previously determined that imports of silicon metal from Argentina, Brazil and China have caused material industry [*sic*] to the domestic industry * * *. Having received no new information during this final investigation which would require us to reach a contrary decision, we thus find material injury by reason of the subject imports.

Plaintiffs now argue that they "were denied their right to present written evidence" when the ITC decided the case against Brazil before plaintiffs submitted post-hearing briefs. *Brief of Plaintiffs,* at 12. However, it is clear from the determination that the ITC did consider plaintiffs' post-hearing submissions and found that they contained no new information:

> It is fundamental that Commission decisions in Title VII investigations, because they are based upon the particular record in a particular investigation, are *sui generis.* However, the record in this investigation is virtually identical to the record for the China determination, in which the Commission thoroughly discussed all relevant issues. Nor have the parties' submissions raised new issues.

Silicon Metal II, at 5. Plaintiffs do not point to anything in their post-hearing briefs that the ITC failed to consider. It is unnecessary to consider whether plaintiffs were denied any substantive right to present post-hearing briefs, because it is clear that the ITC did consider all of plaintiffs' post-hearing submissions before justifiably relying upon its earlier determination.

Plaintiffs also assert, without any citation to the record, that two of the four commissioners then in office were not present for some portion of the hearing. Plaintiffs give no indication which of the commissioners they are referring to. *Brief of Plaintiffs,* at 13.

A transcript of the hearing was prepared. *Administrative Record,* List 1, Document 227. "Absent some showing to the contrary, the Commission is presumed to have considered all evidence in the record." *Rhone Poulenc, S.A. v. United States,* 8 CIT 47, 55, 592 F. Supp. 1318, 1326 (1984). Plaintiffs' vague allegations are insufficient to rebut the presumption that the ITC considered all of the evidence before it.

Plaintiffs next challenge what they call the ITC's "heavy reliance" upon the dumping margin determination of the Department of Commerce in reaching its affirmative injury determination. *Brief of Plaintiffs,* at 12. However, as the *Determination and View of the Commission* makes no mention whatever of the dumping margins. *Silicon Metal II,* at 1–20.

Only the *Additional Views of Acting Chairman Anne E. Brunsdale* refer to the dumping margins. Chairman Brunsdale states, "The most important new information in this case is the Commerce Department's

final determination that the dumping margin for imports of silicon metal from Brazil is 91.06 percent, substantially higher than the preliminary dumping margin. This only reinforces my affirmative determination." *Silicon Metal II,* at 21. Plaintiffs somewhat inconsistently concede this: "One Commissioner relied heavily on the DOC antidumping margin while the other Commissioners failed to state the degree to which the DOC's margin was relevant to the final injury determination." *Brief of Plaintiffs,* at 8.

The Court declines plaintiffs' invitation to speculate upon hidden motives for the ITC's determination. The factors considered by the commission include the condition of the domestic industry, underselling of imports during the period of investigation, difficulty of the domestic industry in raising capital and modernizing. *Silicon Metal II,* at 10, 15. No mention is made of the dumping margins, even though the ITC may consider evidence of dumping margins in making its injury determinations. *Copperweld Corp. v. United States,* 12 CIT 148, 155, 682 F. Supp. 552, 561 (1988).

Even Commissioner Brunsdale's additional views quoted above make it clear that the higher margins only reinforced her affirmative decision, and by implication were not the decisive factor. Nothing before the Court indicates that the ITC determination might have been different if the dumping margins had been lower.

Plaintiffs last argue that the ITC failed to consider or did not give adequate weight to evidence of poor business decisions by the domestic industry and evidence that the domestic industry voluntarily withdrew from the market. *Brief of Plaintiffs,* at 2, 5, 8, 10.

Plaintiffs argument that the ITC did not consider evidence of poor business decisions and voluntary withdrawal is refuted by the determination itself. As noted above, *Silicon Metal II,* at 5, expressly states that the ITC's rationale therein is substantially the same as in *Silicon Metal I.* In *Silicon Metal I,* Acting Chairman Brunsdale notes in her appended additional views, "Respondents claimed that the domestic silicon metal industry 'abandoned' its secondary aluminum customers, in order to reap greater profits both by selling to chemical producers and by producing ferrosilicon instead of silicon metal." *Silicon Metal I, Additional Views Of Acting Chairman Anne E. Brunsdale,* at 33.

Chairman Brunsdale responded to these claims as follows:

> even if the domestic industry did not find it profitable to sell to secondary aluminum producers in 1988 and in some sense did cause its customers to turn to the subject imports, that does not mean the domestic industry is not materially injured by dumped imports. Second, even if the industry made bad long-run decisions by not being loyal to its customers, that does not prevent it from attaining relief under the statute.

Id at 35.

Although Chairman Brunsdale's comments are not the views of the commission, Chairman Brunsdale clearly considered the evidence

plaintiffs assert was ignored in reaching her decision to vote with the rest of the commissioners. While the *Views of the Commission* are silent with respect to voluntary withdrawal, the Court finds that the ITC did not fail to consider the evidence in the record.

With respect to the consideration given the evidence, the question for this Court is not whether the ITC "failed to give this information adequate weight in making its decision," *Brief of Plaintiffs,* at 3, but whether the decision is unsupported by substantial evidence on the record. 19 U.S.C. § 1516a(b)(1)(B) (1992). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *N.A.R. v. United States,* 14 CIT 409,412, 741 F. Supp. 936, 939 (1990).

In assessing whether the evidence is substantial, the Court must take into account whatever in the record fairly detracts from its weight. *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 488, 71 S. Ct. 456, 464, 95 L. Ed. 456, 467 (1951). However, substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Commission,* 383 U.S. 607, 619–620, 16 L. Ed. 2d 131, 141, 86 S.Ct. 1018, 1026 (1966).

In making its determination, the ITC is required to consider the volume of imports at issue, the effect of those imports on domestic prices for like products, the impact of such imports on domestic producers and such other economic factors as are relevant. 19 U.S.C. § 1677(7)(B) (1992). The ITC did so in this case, and the Court finds that its analysis is supported by substantial evidence in the record.

Plaintiffs submit as exhibit A to their brief what is apparently a portion of a transcript of the hearing before the commission. However, it is unauthenticated, unlabeled, and unexplained, excepting only plaintiffs' reference to it as "substantial evidence that the domestic producers of silicon metal voluntarily departed from the market." *Brief of Plaintiffs,* at 10, n.11. Nothing so much as indicates whose testimony is transcribed.

The motion before the Court is for judgment on the administrative record. *Rule 56.1.* Since nothing in plaintiffs' submissions demonstrates that plaintiffs' exhibit A is a part of the administrative record, the Court declines to consider the submission.

Plaintiffs refer to testimony, again without citation to the record, that they allege shows that the domestic industry was in its normal business cycle, that many petitioners made unwise business decisions and that financial statements of petitioners were susceptible to manipulation. *Brief of Plaintiffs,* at 10–11. The allegations are notably short on specifics.

Notwithstanding plaintiffs' failure to provide citations, evidence does exist in the record to support the contention that some segments of the domestic industry voluntarily withdrew from the market. *See,. e.g. Ad-*

ministrative Record, List 1, Document 227, at 88 *et seq* (Testimony of Mr. Joseph Viland). However, as noted by Chairman Brunsdale, that evidence does not compel the conclusion that the domestic industry was not materially injured by reason of imported products.

The Court concludes that the ITC's determination is supported by substantial evidence on the record and is otherwise in accordance with law. Accordingly, the determination announced in *Silicon Metal From Brazil,* USITC Publication 2404 (July, 1991); 56 Fed. Reg. 37,572 (August 7, 1991) is affirmed, and the case is dismissed.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/10 1/21/93 Newman, J.	BASF Corp.	92–06–00388, etc.	523.91 5.9% 423.96 1.9%	423.90 Free of duty	Agreed statement of facts	Minneapolis BASF Catalysts K8–11 and G1–85

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